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Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Cable Television  
Consumer Protection and Competition  
Act of 1992

MM Docket No. 92-259

Broadcast Signal Carriage Issues

PETITION FOR RECONSIDERATION

Cablevision Systems Corporation ("Cablevision"), by its attorneys, hereby requests the Federal Communications Commission, pursuant to Section 1.429 of the Commission's rules, to reconsider its decision to allow local stations electing retransmission consent to invoke network nonduplication protection, whether or not these stations are actually carried by a cable system.<sup>1/</sup> Cablevision is a multi-system operator serving more than two million subscribers in 19 states, and holds ownership interests in companies that produce and distribute national and regional programming services for the cable television industry. Cablevision will be directly affected by the implementation of retransmission consent.

<sup>1/</sup>In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, MM Docket No. 92-259 (released March 29, 1993) at ¶ 180. ("Report and Order").

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List A B C D E

**I. The Commission is Not Bound by Legislative History That Dictates a Result Inconsistent with the Intent of the Cable Act**

In reaching its decision to confer network nonduplication protection on stations that elect retransmission consent, the Commission relied on a single passage in the legislative history of the Cable Television Consumer Protection and Competition Act of 1992<sup>2/</sup> that "appear[ed]" to address "the possible substitution on cable systems of distant signals for local ones carrying the same programming."<sup>3/</sup> While the legislative history is one indication of Congressional intent on this issue,

entirety of the information should not apply to stations

of New York-based network affiliates.<sup>7/</sup> Under the current regulatory regime, if a New York affiliate elects retransmission consent and Cablevision either declines to negotiate or if the parties fail to reach a retransmission consent agreement, the New York affiliate could use the threat of network nonduplication to force Cablevision to accede to its terms.<sup>8/</sup> Should Cablevision refuse, it would be barred from importing a Connecticut-based affiliate of the same network,<sup>9/</sup> despite the demonstrated preference of many Connecticut residents and government officials for access to the Connecticut affiliates.<sup>10/</sup>

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<sup>7/</sup>See 47 C.F.R. § 76.92.

<sup>8/</sup>A station may exercise its nonduplication rights only with respect to communities within its "geographic zone." 47 C.F.R. §76.92. While most of the Connecticut communities served by Cablevision lie outside the protected zone of the New York-based network affiliates, it is not technically feasible, given system architecture and the requirement that all broadcast signals be carried on the basic tier, to delete carriage of an affiliate only in those communities. Likewise, it would not be possible to import more distant affiliates for viewing only in those communities outside of the New York stations' geographic zone. Technical issues aside, it would be impossible as a matter of customer relations to explain why some subscribers on a system had access to network programming while other subscribers on the

Neither the Act nor the network nonduplication rules were intended to effect such a result. In adopting the Act, Congress sought to provide consumers with access to the widest diversity of programming, including network programming.<sup>11/</sup> Congress recognized that network programming, as part of broadcast programming, "remains the most popular programming on cable systems."<sup>12/</sup> Congress found, moreover, that for cable subscribers to have effective access to the programming they desire, it must be available on the cable system itself and not via an A/B switch or an antenna.<sup>13/</sup>

The Commission has similarly recognized the value of network

providers, to promote program diversity for viewers,<sup>15/</sup> and, ultimately, to protect the local advertising and public service announcements within and adjacent to network programming.<sup>16/</sup>

As the situation described above illustrates, the application of network nonduplication rights in conjunction with retransmission consent could have the perverse result of diminishing the amount of network programming available to subscribers and curtailing their ability to view the programming, advertising and public service announcements which they consider to be "local" and the most relevant to their lives. Such a result is certainly not required by the terms of Sections 614 or 325 of the Communications Act of 1934, as amended by the 1992 Cable Act, and, as demonstrated above, is contrary to the policies embodied in the Act.

**B. Network Nonduplication was Intended as a Substitute, Not a Supplement, for Retransmission Consent**

Nonduplication rights were originally extended to network affiliates carried on cable in large part to redress the perceived competitive imbalance that could result from the Commission's determination not to apply retransmission consent to cable in the 1960s.<sup>17/</sup> Nonduplication was intended, along with must carry requirements, to create a level playing field for

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<sup>15/</sup>See Program Exclusivity Order, 3 FCC Rcd at 5317-18, 5320 (1988).

<sup>16/</sup>Id. at 5317-5318.

<sup>17/</sup>First Report on Microwave Relays (Dockets 14895, 15233), 4 R.R.2d 1725, 1751-52 (1965).

cable systems and broadcasting stations seeking to make television programming available to the public.<sup>18/</sup>

When the Commission subsequently permitted affiliates to exercise nonduplication rights even in communities where they were not carried by a cable system,<sup>19/</sup> it did so to enable affiliates to compensate for the absence of must carry rules.<sup>20/</sup> In essence, network affiliates were given leverage to assist them in obtaining carriage which they could not otherwise demand.

Enactment of the 1992 Cable Act has removed any remaining justification for applying network nonduplication rules to networks affiliates electing retransmission consent. Network affiliates are now empowered to demand "must carry" status or elect to negotiate for retransmission consent; the choice is completely within their control. Adding nonduplication rights to this arsenal, far from leveling the playing field between cable operators and broadcasters, confers an almost insuperable advantage on network affiliates in negotiations over retransmission rights.

#### CONCLUSION

There is simply no legal or policy basis for affording network affiliates both retransmission consent and nonduplication rights. Coupled with retransmission consent, network

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<sup>18/</sup>Id. at 1759 (1965).

<sup>19/</sup>Program Exclusivity Order, 3 FCC Rcd. at 5320.

<sup>20/</sup>See id. at 5314, 5320 n.236.

nonduplication rules would enable a network affiliate to deprive (or threaten to deprive) subscribers from receiving programming from other stations that are willing to enter into carriage agreements with a cable operator, giving the affiliate the upper hand in every negotiation over retransmission consent.

Particularly perverse is the situation in which a network affiliate asserting nonduplication rights could block carriage of another affiliate that provides more programming of local interest to and is preferred by many subscribers. The Commission should reconsider its initial decision in this docket and hold



that the network nonduplication rules do not apply to stations electing to negotiate for retransmission consent from a cable system.<sup>21/</sup>

Respectfully submitted,

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May 3, 1993

D16131.4

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<sup>21/</sup>At a minimum, the Commission should revise its rules to provide that a station that elects retransmission consent but fails to enter into a carriage agreement with a cable operator may not invoke network nonduplication rights.